

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 249

Introduced by Fulton, 29; Karpisek, 32.

Read first time January 14, 2009

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 77-2703 and 77-2708, Revised Statutes Cumulative
3 Supplement, 2008; to change the sales and use tax
4 collection fees; and to repeal the original sections.
5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2703, Revised Statutes Cumulative
2 Supplement, 2008, is amended to read:

3 77-2703 (1) There is hereby imposed a tax at the rate
4 provided in section 77-2701.02 upon the gross receipts from all
5 sales of tangible personal property sold at retail in this state;
6 the gross receipts of every person engaged as a public utility,
7 as a community antenna television service operator, or as a
8 satellite service operator, any person involved in the connecting
9 and installing of the services defined in subdivision (2)(a), (b),
10 (d), or (e) of section 77-2701.16, or every person engaged as
11 a retailer of intellectual or entertainment properties referred
12 to in subsection (3) of section 77-2701.16; the gross receipts
13 from the sale of admissions in this state; the gross receipts
14 from the sale of warranties, guarantees, service agreements, or
15 maintenance agreements when the items covered are subject to tax
16 under this section; beginning January 1, 2008, the gross receipts
17 from the sale of bundled transactions when one or more of the
18 products included in the bundle are taxable; the gross receipts
19 from the provision of services defined in subsection (4) of section
20 77-2701.16; and the gross receipts from the sale of products
21 delivered electronically as described in subsection (9) of section
22 77-2701.16. Except as provided in section 77-2701.03, when there is
23 a sale, the tax shall be imposed at the rate in effect at the time
24 the gross receipts are realized under the accounting basis used by
25 the retailer to maintain his or her books and records.

1 (a) The tax imposed by this section shall be collected
2 by the retailer from the consumer. It shall constitute a part of
3 the purchase price and until collected shall be a debt from the
4 consumer to the retailer and shall be recoverable at law in the
5 same manner as other debts. The tax required to be collected by the
6 retailer from the consumer constitutes a debt owed by the retailer
7 to this state.

8 (b) It is unlawful for any retailer to advertise, hold
9 out, or state to the public or to any customer, directly or
10 indirectly, that the tax or part thereof will be assumed or
11 absorbed by the retailer, that it will not be added to the selling,
12 renting, or leasing price of the property sold, rented, or leased,
13 or that, if added, it or any part thereof will be refunded. The
14 provisions of this subdivision shall not apply to a public utility.

15 (c) The tax required to be collected by the retailer from
16 the purchaser, unless otherwise provided by statute or by rule and
17 regulation of the Tax Commissioner, shall be displayed separately
18 from the list price, the price advertised in the premises, the
19 marked price, or other price on the sales check or other proof of
20 sales, rentals, or leases.

21 (d) For the purpose of more efficiently securing the
22 payment, collection, and accounting for the sales tax and for the
23 convenience of the retailer in collecting the sales tax, it shall
24 be the duty of the Tax Commissioner to provide a schedule or
25 schedules of the amounts to be collected from the consumer or user

1 to effectuate the computation and collection of the tax imposed
2 by the Nebraska Revenue Act of 1967. Such schedule or schedules
3 shall provide that the tax shall be collected from the consumer
4 or user uniformly on sales according to brackets based on sales
5 prices of the item or items. Retailers may compute the tax due on
6 any transaction on an item or an invoice basis. The rounding rule
7 provided in section 77-3,117 applies.

8 (e) The use of tokens or stamps for the purpose of
9 collecting or enforcing the collection of the taxes imposed in the
10 Nebraska Revenue Act of 1967 or for any other purpose in connection
11 with such taxes is prohibited.

12 (f) For the purpose of the proper administration of the
13 provisions of the Nebraska Revenue Act of 1967 and to prevent
14 evasion of the retail sales tax, it shall be presumed that all
15 gross receipts are subject to the tax until the contrary is
16 established. The burden of proving that a sale of property is not
17 a sale at retail is upon the person who makes the sale unless he
18 or she takes from the purchaser (i) a resale certificate to the
19 effect that the property is purchased for the purpose of reselling,
20 leasing, or renting it, (ii) an exemption certificate pursuant to
21 subsection (7) of section 77-2705, or (iii) a direct payment permit
22 pursuant to sections 77-2705.01 to 77-2705.03. Receipt of a resale
23 certificate, exemption certificate, or direct payment permit shall
24 be conclusive proof for the seller that the sale was made for
25 resale or was exempt or that the tax will be paid directly to the

1 state.

2 (g) In the rental or lease of automobiles, trucks,
3 trailers, semitrailers, and truck-tractors as defined in the Motor
4 Vehicle Registration Act, the tax shall be collected by the lessor
5 on the rental or lease price at the tax rate in effect on the date
6 the automobile, truck, trailer, semitrailer, or truck-tractor is
7 delivered to the lessee, except as otherwise provided within this
8 section.

9 (h) In the rental or lease of automobiles, trucks,
10 trailers, semitrailers, and truck-tractors as defined in the act,
11 for periods of one year or more, the lessor may elect not to
12 collect and remit the sales tax on the gross receipts and instead
13 pay a sales tax on the cost of such vehicle. If such election is
14 made, it shall be made pursuant to the following conditions:

15 (i) Notice of the desire to make such election shall
16 be filed with the Tax Commissioner and shall not become effective
17 until the Tax Commissioner is satisfied that the taxpayer has
18 complied with all conditions of this subsection and all rules and
19 regulations of the Tax Commissioner;

20 (ii) Such election when made shall continue in force and
21 effect for a period of not less than two years and thereafter until
22 such time as the lessor elects to terminate the election;

23 (iii) When such election is made, it shall apply to all
24 vehicles of the lessor rented or leased for periods of one year or
25 more except vehicles to be leased to common or contract carriers

1 who provide to the lessor a valid common or contract carrier
2 exemption certificate. If the lessor rents or leases other vehicles
3 for periods of less than one year, such lessor shall maintain his
4 or her books and records and his or her accounting procedure as the
5 Tax Commissioner prescribes; and

6 (iv) The Tax Commissioner by rule and regulation shall
7 prescribe the contents and form of the notice of election, a
8 procedure for the determination of the tax base of vehicles which
9 are under an existing lease at the time such election becomes
10 effective, the method and manner for terminating such election, and
11 such other rules and regulations as may be necessary for the proper
12 administration of this subdivision.

13 (i) The tax imposed by this section on the sales of
14 motor vehicles, semitrailers, and trailers as defined in sections
15 60-339, 60-348, and 60-354 shall be the liability of the purchaser
16 and, with the exception of motor vehicles, semitrailers, and
17 trailers registered pursuant to section 60-3,198, the tax shall
18 be collected by the county treasurer or designated county official
19 as provided in the Motor Vehicle Registration Act at the time
20 the purchaser makes application for the registration of the motor
21 vehicle, semitrailer, or trailer for operation upon the highways
22 of this state. The tax imposed by this section on motor vehicles,
23 semitrailers, and trailers registered pursuant to section 60-3,198
24 shall be collected by the Department of Motor Vehicles at the time
25 the purchaser makes application for the registration of the motor

1 vehicle, semitrailer, or trailer for operation upon the highways
2 of this state. At the time of the sale of any motor vehicle,
3 semitrailer, or trailer, the seller shall (i) state on the sales
4 invoice the dollar amount of the tax imposed under this section
5 and (ii) furnish to the purchaser a certified statement of the
6 transaction, in such form as the Tax Commissioner prescribes,
7 setting forth as a minimum the total sales price, the allowance for
8 any trade-in, and the difference between the two. The sales tax due
9 shall be computed on the difference between the total sales price
10 and the allowance for any trade-in as disclosed by such certified
11 statement. Any seller who willfully understates the amount upon
12 which the sales tax is due shall be subject to a penalty of one
13 thousand dollars. A copy of such certified statement shall also
14 be furnished to the Tax Commissioner. Any seller who fails or
15 refuses to furnish such certified statement shall be guilty of
16 a misdemeanor and shall, upon conviction thereof, be punished by
17 a fine of not less than twenty-five dollars nor more than one
18 hundred dollars. If the seller fails to state on the sales invoice
19 the dollar amount of the tax due, the purchaser shall have the
20 right and authority to rescind any agreement for purchase and
21 to declare the purchase null and void. If the purchaser retains
22 such motor vehicle, semitrailer, or trailer in this state and
23 does not register it for operation on the highways of this state
24 within thirty days of the purchase thereof, the tax imposed by
25 this section shall immediately thereafter be paid by the purchaser

1 to the county treasurer, the designated county official, or the
2 Department of Motor Vehicles. If the tax is not paid on or
3 before the thirtieth day after its purchase, the county treasurer,
4 designated county official, or Department of Motor Vehicles shall
5 also collect from the purchaser interest from the thirtieth day
6 through the date of payment and sales tax penalties as provided in
7 the Nebraska Revenue Act of 1967. The county treasurer, designated
8 county official, or Department of Motor Vehicles shall report and
9 remit the tax so collected to the Tax Commissioner by the fifteenth
10 day of the following month. The county treasurer or designated
11 county official shall deduct and withhold for the use of the county
12 general fund, from all amounts required to be collected under
13 this subsection, the collection fee permitted to be deducted by
14 any retailer collecting the sales tax. The Department of Motor
15 Vehicles shall deduct, withhold, and deposit in the Motor Carrier
16 Division Cash Fund the collection fee permitted to be deducted by
17 any retailer collecting the sales tax. The collection fee shall
18 be forfeited if the county treasurer, designated county official,
19 or Department of Motor Vehicles violates any rule or regulation
20 pertaining to the collection of the use tax.

21 (j)(i) The tax imposed by this section on the sale of a
22 motorboat as defined in section 37-1204 shall be the liability of
23 the purchaser. The tax shall be collected by the county treasurer
24 or designated county official at the time the purchaser makes
25 application for the registration of the motorboat. At the time

1 of the sale of a motorboat, the seller shall (A) state on the
2 sales invoice the dollar amount of the tax imposed under this
3 section and (B) furnish to the purchaser a certified statement of
4 the transaction, in such form as the Tax Commissioner prescribes,
5 setting forth as a minimum the total sales price, the allowance for
6 any trade-in, and the difference between the two. The sales tax due
7 shall be computed on the difference between the total sales price
8 and the allowance for any trade-in as disclosed by such certified
9 statement. Any seller who willfully understates the amount upon
10 which the sales tax is due shall be subject to a penalty of one
11 thousand dollars. A copy of such certified statement shall also
12 be furnished to the Tax Commissioner. Any seller who fails or
13 refuses to furnish such certified statement shall be guilty of a
14 misdemeanor and shall, upon conviction thereof, be punished by a
15 fine of not less than twenty-five dollars nor more than one hundred
16 dollars. If the seller fails to state on the sales invoice the
17 dollar amount of the tax due, the purchaser shall have the right
18 and authority to rescind any agreement for purchase and to declare
19 the purchase null and void. If the purchaser retains such motorboat
20 in this state and does not register it within thirty days of the
21 purchase thereof, the tax imposed by this section shall immediately
22 thereafter be paid by the purchaser to the county treasurer or
23 designated county official. If the tax is not paid on or before
24 the thirtieth day after its purchase, the county treasurer or
25 designated county official shall also collect from the purchaser

1 interest from the thirtieth day through the date of payment and
2 sales tax penalties as provided in the Nebraska Revenue Act of
3 1967. The county treasurer or designated county official shall
4 report and remit the tax so collected to the Tax Commissioner by
5 the fifteenth day of the following month. The county treasurer or
6 designated county official shall deduct and withhold for the use of
7 the county general fund, from all amounts required to be collected
8 under this subsection, the collection fee permitted to be deducted
9 by any retailer collecting the sales tax. The collection fee shall
10 be forfeited if the county treasurer or designated county official
11 violates any rule or regulation pertaining to the collection of the
12 use tax.

13 (ii) In the rental or lease of motorboats, the tax shall
14 be collected by the lessor on the rental or lease price.

15 (k) The Tax Commissioner shall adopt and promulgate
16 necessary rules and regulations for determining the amount subject
17 to the taxes imposed by this section so as to insure that the
18 full amount of any applicable tax is paid in cases in which a
19 sale is made of which a part is subject to the taxes imposed by
20 this section and a part of which is not so subject and a separate
21 accounting is not practical or economical.

22 (2) A use tax is hereby imposed on the storage, use, or
23 other consumption in this state of property purchased, leased, or
24 rented from any retailer and on any transaction the gross receipts
25 of which are subject to tax under subsection (1) of this section

1 on or after June 1, 1967, for storage, use, or other consumption
2 in this state at the rate set as provided in subsection (1) of
3 this section on the sales price of the property or, in the case of
4 leases or rentals, of the lease or rental prices.

5 (a) Every person storing, using, or otherwise consuming
6 in this state property purchased from a retailer or leased or
7 rented from another person for such purpose shall be liable for the
8 use tax at the rate in effect when his or her liability for the
9 use tax becomes certain under the accounting basis used to maintain
10 his or her books and records. His or her liability shall not be
11 extinguished until the use tax has been paid to this state, except
12 that a receipt from a retailer engaged in business in this state
13 or from a retailer who is authorized by the Tax Commissioner, under
14 such rules and regulations as he or she may prescribe, to collect
15 the sales tax and who is, for the purposes of the Nebraska Revenue
16 Act of 1967 relating to the sales tax, regarded as a retailer
17 engaged in business in this state, which receipt is given to the
18 purchaser pursuant to subdivision (b) of this subsection, shall be
19 sufficient to relieve the purchaser from further liability for the
20 tax to which the receipt refers.

21 (b) Every retailer engaged in business in this state and
22 selling, leasing, or renting property for storage, use, or other
23 consumption in this state shall, at the time of making any sale,
24 collect any tax which may be due from the purchaser and shall give
25 to the purchaser, upon request, a receipt therefor in the manner

1 and form prescribed by the Tax Commissioner.

2 (c) The Tax Commissioner, in order to facilitate the
3 proper administration of the use tax, may designate such person or
4 persons as he or she may deem necessary to be use tax collectors
5 and delegate to such persons such authority as is necessary to
6 collect any use tax which is due and payable to the State of
7 Nebraska. The Tax Commissioner may require of all persons so
8 designated a surety bond in favor of the State of Nebraska to
9 insure against any misappropriation of state funds so collected.
10 The Tax Commissioner may require any tax official, city, county, or
11 state, to collect the use tax on behalf of the state. All persons
12 designated to or required to collect the use tax shall account for
13 such collections in the manner prescribed by the Tax Commissioner.
14 Nothing in this subdivision shall be so construed as to prevent the
15 Tax Commissioner or his or her employees from collecting any use
16 taxes due and payable to the State of Nebraska.

17 (d) All persons designated to collect the use tax and all
18 persons required to collect the use tax shall forward the total of
19 such collections to the Tax Commissioner at such time and in such
20 manner as the Tax Commissioner may prescribe. For all use taxes
21 collected ~~prior to October 1, 2002,~~ on and after July 1, 2010, such
22 collectors of the use tax shall deduct and withhold from the amount
23 of taxes collected two and one-half percent of the first three
24 thousand dollars remitted each month and one-half of one percent
25 of all amounts in excess of three thousand dollars remitted each

1 month as reimbursement for the cost of collecting the tax. For
2 use taxes collected on and after October 1, 2002, and before July
3 1, 2010, such collectors of the use tax shall deduct and withhold
4 from the amount of taxes collected two and one-half percent of the
5 first three thousand dollars remitted each month as reimbursement
6 for the cost of collecting the tax. Any such deduction shall be
7 forfeited to the State of Nebraska if such collector violates any
8 rule, regulation, or directive of the Tax Commissioner.

9 (e) For the purpose of the proper administration of the
10 Nebraska Revenue Act of 1967 and to prevent evasion of the use tax,
11 it shall be presumed that property sold, leased, or rented by any
12 person for delivery in this state is sold, leased, or rented for
13 storage, use, or other consumption in this state until the contrary
14 is established. The burden of proving the contrary is upon the
15 person who purchases, leases, or rents the property.

16 (f) For the purpose of the proper administration of the
17 Nebraska Revenue Act of 1967 and to prevent evasion of the use tax,
18 for the sale of property to an advertising agency which purchases
19 the property as an agent for a disclosed or undisclosed principal,
20 the advertising agency is and remains liable for the sales and
21 use tax on the purchase the same as if the principal had made the
22 purchase directly.

23 Sec. 2. Section 77-2708, Revised Statutes Cumulative
24 Supplement, 2008, is amended to read:

25 77-2708 (1)(a) The sales and use taxes imposed by the

1 Nebraska Revenue Act of 1967 shall be due and payable to the
2 Tax Commissioner monthly on or before the twenty-fifth day of the
3 month next succeeding each monthly period unless otherwise provided
4 pursuant to the Nebraska Revenue Act of 1967.

5 (b) (i) On or before the twenty-fifth day of the month
6 following each monthly period or such other period as the Tax
7 Commissioner may require, a return for such period, along with all
8 taxes due, shall be filed with the Tax Commissioner in such form
9 and content as the Tax Commissioner may prescribe and containing
10 such information as the Tax Commissioner deems necessary for the
11 proper administration of the Nebraska Revenue Act of 1967. The Tax
12 Commissioner, if he or she deems it necessary in order to insure
13 payment to or facilitate the collection by the state of the amount
14 of sales or use taxes due, may require returns and payment of the
15 amount of such taxes for periods other than monthly periods in the
16 case of a particular seller, retailer, or purchaser, as the case
17 may be. The Tax Commissioner shall by rule and regulation require
18 reports and tax payments from sellers, retailers, or purchasers
19 depending on their yearly tax liability. Except as required by
20 the streamlined sales and use tax agreement, annual returns shall
21 be required if such sellers', retailers', or purchasers' yearly
22 tax liability is less than nine hundred dollars, quarterly returns
23 shall be required if their yearly tax liability is nine hundred
24 dollars or more and less than three thousand dollars, and monthly
25 returns shall be required if their yearly tax liability is three

1 thousand dollars or more. The Tax Commissioner shall have the
2 discretion to allow an annual return for seasonal retailers, even
3 when their yearly tax liability exceeds the amounts listed in this
4 subdivision.

5 The Tax Commissioner may adopt and promulgate rules
6 and regulations to allow annual, semiannual, or quarterly returns
7 for any retailer making monthly remittances or payments of sales
8 and use taxes by electronic funds transfer or for any retailer
9 remitting tax to the state pursuant to the streamlined sales and
10 use tax agreement. Such rules and regulations may establish a
11 method of determining the amount of the payment that will result in
12 substantially all of the tax liability being paid each quarter. At
13 least once each year, the difference between the amount paid and
14 the amount due shall be reconciled. If the difference is more than
15 ten percent of the amount paid, a penalty of fifty percent of the
16 unpaid amount shall be imposed.

17 (ii) For purposes of the sales tax, a return shall be
18 filed by every retailer liable for collection from a purchaser and
19 payment to the state of the tax, except that a combined sales tax
20 return may be filed for all licensed locations which are subject
21 to common ownership. For purposes of this subdivision, common
22 ownership means the same person or persons own eighty percent or
23 more of each licensed location. For purposes of the use tax, a
24 return shall be filed by every retailer engaged in business in this
25 state and by every person who has purchased property, the storage,

1 use, or other consumption of which is subject to the use tax, but
2 who has not paid the use tax due to a retailer required to collect
3 the tax.

4 (iii) The Tax Commissioner may require that returns be
5 signed by the person required to file the return or by his or her
6 duly authorized agent but need not be verified by oath.

7 (iv) A taxpayer who keeps his or her regular books
8 and records on a cash basis, an accrual basis, or any generally
9 recognized accounting basis which correctly reflects the operation
10 of the business may file the sales and use tax returns required
11 by the Nebraska Revenue Act of 1967 on the same accounting basis
12 that is used for the regular books and records, except that on
13 credit, conditional, and installment sales, the retailer who keeps
14 his or her books on an accrual basis may report such sales on
15 the cash basis and pay the tax upon the collections made during
16 each month. If a taxpayer transfers, sells, assigns, or otherwise
17 disposes of an account receivable, he or she shall be deemed
18 to have received the full balance of the consideration for the
19 original sale and shall be liable for the remittance of the sales
20 tax on the balance of the total sale price not previously reported,
21 except that such transfer, sale, assignment, or other disposition
22 of an account receivable by a retailer to a subsidiary shall not be
23 deemed to require the retailer to pay the sales tax on the credit
24 sale represented by the account transferred prior to the time the
25 customer makes payment on such account. If the subsidiary does not

1 obtain a Nebraska sales tax permit, the taxpayer shall obtain a
2 surety bond in favor of the State of Nebraska to insure payment
3 of the tax and any interest and penalty imposed thereon under this
4 section in an amount not less than two times the amount of tax
5 payable on outstanding accounts receivable held by the subsidiary
6 as of the end of the prior calendar year. Failure to obtain either
7 a sales tax permit or a surety bond in accordance with this section
8 shall result in the payment on the next required filing date of
9 all sales taxes not previously remitted. When the retailer has
10 adopted one basis or the other of reporting credit, conditional, or
11 installment sales and paying the tax thereon, he or she will not be
12 permitted to change from that basis without first having notified
13 the Tax Commissioner.

14 (c) Except as provided in the streamlined sales and use
15 tax agreement, the taxpayer required to file the return shall
16 deliver or mail any required return together with a remittance of
17 the net amount of the tax due to the office of the Tax Commissioner
18 on or before the required filing date. Failure to file the return,
19 filing after the required filing date, failure to remit the net
20 amount of the tax due, or remitting the net amount of the tax due
21 after the required filing date shall be cause for a penalty, in
22 addition to interest, of ten percent of the amount of tax not paid
23 by the required filing date or twenty-five dollars, whichever is
24 greater, unless the penalty is being collected under subdivision
25 (1)(i) or (1)(j)(i) of section 77-2703 by a county treasurer, a

1 designated county official, or the Department of Motor Vehicles, in
2 which case the penalty shall be five dollars.

3 (d) For all sales tax collected ~~prior to October 1,~~
4 ~~2002,~~ on and after July 1, 2010, the taxpayer shall deduct and
5 withhold, from the taxes otherwise due from him or her on his
6 or her tax return, two and one-half percent of the first three
7 thousand dollars remitted each month and one-half of one percent
8 of all amounts in excess of three thousand dollars remitted each
9 month to reimburse himself or herself for the cost of collecting
10 the tax. For all sales tax collected on and after October 1, 2002,
11 and before July 1, 2010, the taxpayer shall deduct and withhold,
12 from the taxes otherwise due from him or her on his or her
13 tax return, two and one-half percent of the first three thousand
14 dollars remitted each month to reimburse himself or herself for the
15 cost of collecting the tax. Taxpayers filing a combined return as
16 allowed by subdivision (1)(b)(ii) of this subsection shall compute
17 such collection fees on the basis of the receipts and liability of
18 each licensed location.

19 (2)(a) If the Tax Commissioner determines that any sales
20 or use tax amount, penalty, or interest has been paid more than
21 once, has been erroneously or illegally collected or computed,
22 or has been paid and the purchaser qualifies for a refund under
23 section 77-2708.01, the Tax Commissioner shall set forth that fact
24 in his or her records and the excess amount collected or paid may
25 be credited on any sales, use, or income tax amounts then due and

1 payable from the person under the Nebraska Revenue Act of 1967. Any
2 balance may be refunded to the person by whom it was paid or his or
3 her successors, administrators, or executors.

4 (b) No refund shall be allowed unless a claim therefor
5 is filed with the Tax Commissioner by the person who made the
6 overpayment or his or her attorney, executor, or administrator
7 within three years from the required filing date following the
8 close of the period for which the overpayment was made, within six
9 months after any determination becomes final under section 77-2709,
10 or within six months from the date of overpayment with respect
11 to such determinations, whichever of these three periods expires
12 later, unless the credit relates to a period for which a waiver has
13 been given. Failure to file a claim within the time prescribed in
14 this subsection shall constitute a waiver of any demand against the
15 state on account of overpayment.

16 (c) Every claim shall be in writing on forms prescribed
17 by the Tax Commissioner and shall state the specific amount and
18 grounds upon which the claim is founded. No refund shall be made in
19 any amount less than two dollars.

20 (d) The Tax Commissioner shall allow or disallow
21 a claim within one hundred eighty days after it has been
22 filed. A request for a hearing shall constitute a waiver of
23 the one-hundred-eighty-day period. The claimant and the Tax
24 Commissioner may also agree to extend the one-hundred-eighty-day
25 period. If a hearing has not been requested and the Tax

1 Commissioner has neither allowed nor disallowed a claim within
2 either the one hundred eighty days or the period agreed to by the
3 claimant and the Tax Commissioner, the claim shall be deemed to
4 have been allowed.

5 (e) Within thirty days after disallowing any claim in
6 whole or in part, the Tax Commissioner shall serve notice of his or
7 her action on the claimant in the manner prescribed for service of
8 notice of a deficiency determination.

9 (f) Within thirty days after the mailing of the notice
10 of the Tax Commissioner's action upon a claim filed pursuant
11 to the Nebraska Revenue Act of 1967, the action of the Tax
12 Commissioner shall be final unless the taxpayer seeks review of the
13 Tax Commissioner's determination as provided in section 77-27,127.

14 (g) Upon the allowance of a credit or refund of any
15 sum erroneously or illegally assessed or collected, of any penalty
16 collected without authority, or of any sum which was excessive
17 or in any manner wrongfully collected, interest shall be allowed
18 and paid on the amount of such credit or refund at the rate
19 specified in section 45-104.02, as such rate may from time to time
20 be adjusted, from the date such sum was paid or from the date the
21 return was required to be filed, whichever date is later, to the
22 date of the allowance of the refund or, in the case of a credit,
23 to the due date of the amount against which the credit is allowed,
24 but in the case of a voluntary and unrequested payment in excess
25 of actual tax liability or a refund under section 77-2708.01, no

1 interest shall be allowed when such excess is refunded or credited.

2 (h) No suit or proceeding shall be maintained in any
3 court for the recovery of any amount alleged to have been
4 erroneously or illegally determined or collected unless a claim
5 for refund or credit has been duly filed.

6 (i) The Tax Commissioner may recover any refund or part
7 thereof which is erroneously made and any credit or part thereof
8 which is erroneously allowed by issuing a deficiency determination
9 within one year from the date of refund or credit or within the
10 period otherwise allowed for issuing a deficiency determination,
11 whichever expires later.

12 (j)(i) Credit shall be allowed to the retailer,
13 contractor, or repairperson for sales or use taxes paid pursuant
14 to the Nebraska Revenue Act of 1967 on any deduction taken that
15 is attributed to bad debts not including interest. Bad debt has
16 the same meaning as in 26 U.S.C. 166, as such section existed
17 on January 1, 2003. However, the amount calculated pursuant to
18 26 U.S.C. 166 shall be adjusted to exclude: Financing charges
19 or interest; sales or use taxes charged on the purchase price;
20 uncollectible amounts on property that remains in the possession
21 of the seller until the full purchase price is paid; and expenses
22 incurred in attempting to collect any debt and repossessed
23 property.

24 (ii) Bad debts may be deducted on the return for the
25 period during which the bad debt is written off as uncollectible

1 in the claimant's books and records and is eligible to be deducted
2 for federal income tax purposes. A claimant who is not required
3 to file federal income tax returns may deduct a bad debt on a
4 return filed for the period in which the bad debt is written off
5 as uncollectible in the claimant's books and records and would be
6 eligible for a bad debt deduction for federal income tax purposes
7 if the claimant was required to file a federal income tax return.

8 (iii) If a deduction is taken for a bad debt and the
9 debt is subsequently collected in whole or in part, the tax on the
10 amount so collected must be paid and reported on the return filed
11 for the period in which the collection is made.

12 (iv) When the amount of bad debt exceeds the amount
13 of taxable sales for the period during which the bad debt is
14 written off, a refund claim may be filed within the otherwise
15 applicable statute of limitations for refund claims. The statute of
16 limitations shall be measured from the due date of the return on
17 which the bad debt could first be claimed.

18 (v) If filing responsibilities have been assumed by a
19 certified service provider, the service provider may claim, on
20 behalf of the retailer, any bad debt allowance provided by this
21 section. The certified service provider shall credit or refund the
22 full amount of any bad debt allowance or refund received to the
23 retailer.

24 (vi) For purposes of reporting a payment received on
25 a previously claimed bad debt, any payments made on a debt or

1 account are applied first proportionally to the taxable price of
2 the property or service and the sales tax thereon, and secondly to
3 interest, service charges, and any other charges.

4 (vii) In situations in which the books and records of the
5 party claiming the bad debt allowance support an allocation of the
6 bad debts among the member states in the streamlined sales and use
7 tax agreement, the state shall permit the allocation.

8 Sec. 3. Original sections 77-2703 and 77-2708, Revised
9 Statutes Cumulative Supplement, 2008, are repealed.